

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

JONATHAN MANGAN, individually, and on
behalf of all other persons similarly situated,

Plaintiff,

vs.

CHRISTIAN COUNTY, MISSOURI, by and
through its Board of County Commissioners, ROY
MATTHEWS, TOM CHUDOMELKA, and
BILL BARNETT, in their official capacities; and
STEVE WHITNEY, Sheriff of Christian County, in
his official capacity,

Defendant.

Case No. 99-3373-CV-S-RGC

PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS MOTION TO
MODIFY ORDER CERTIFYING CLASS

On October 6, 1999 Plaintiff filed a Class Action Complaint regarding the conditions in the Christian County jail. Plaintiff also filed a Motion to certify a class under Fed. R. Civ. P. 23(b)(2). (Brief in Supp. of Mot. for Class Cert. at 2.) On October 13, 1999 the Court certified a class under Fed. R. Civ. P. 23(a). The class was defined as "all members who are inmates or who have been inmates during the past three years in the Christian County, Missouri jail." (Order of 10/13/99 at 2.) The Court further ordered Plaintiff to "inform all class members immediately of the existence of this class action suit." (*Id.*)

Plaintiff requests the Court to modify its Order to clarify that the class is certified pursuant to Rule 23(b)(2) for the purposes of injunctive relief, not damages. Plaintiff also asks the Court to redefine the class as “all persons who are now or in the future will be incarcerated the Christian County, Missouri jail.”

Finally, Plaintiff asks the Court to relieve him of the obligation to notify class members of the existence of this lawsuit. It is well settled that “class actions seeking declaratory or injunctive relief under Rule 23(b)(2) are not subject to the individual notice requirements of Rule 23(c)(2).” Herbert Newberg & Alba Conte, *Newberg on Class Actions* § 8.05 (3d. Ed. 1992 & Supp. 1999) This is the law in the Eighth Circuit. *See Reynolds v. Nat’l Football League*, 584 F.2d 280, 285 (8th Cir. 1978).

If the Court determines that notice is necessary, Plaintiff asks the Court to enter an Order that notice posted in the Christian County jail informing inmates of the lawsuit and their right to intervene is the “best notice practicable under the circumstances.” In previous cases, such notice was held to be adequate. *See, e.g., Ahrens v. Thomas*, 570 F.2d 286, 288 (8th Cir. 1978).

WHEREFORE, Plaintiff respectfully requests this Court to modify its Order certifying the class as follows: (1) clarifying that the class is certified pursuant to Rule 23(b)(2) for the purposes of injunctive relief, not damages; (2) redefining the class as “all persons who are now or in the future will be incarcerated in the Christian County, Missouri jail;” (3) relieving him of the obligation to notify class members of the existence of this lawsuit or, in the alternative, finding that notice posted in the Christian County jail informing inmates of the lawsuit and their right to intervene is the “best notice practicable under the circumstances;’ or (4) for such other and further relief as the Court deems just and equitable.

SHOOK, HARDY & BACON L.L.P.

By _____
Paul W. Rebein, #43438

84 Corporate Woods
10801 Mastin, Suite 1000
Overland Park, KS 66210-1669
913/451-6060
FAX: 913/451-8879

EDDIE M. LORENZO
Mo. Bar Reg. #43134
Legal Director
American Civil Liberties Union
Foundation of Kansas & W. Missouri
1010 West 39th Street, Suite 103
Kansas City, Missouri 64111
816/756-3113, Ext. 305
FAX: 816/756-0945

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of November, 1999, I mailed, postage prepaid, a true and correct copy of the above and foregoing to:

Raymond E. Whiteaker
WHITEAKER & WILSON, P.C.
1919 E. Battlefield, Suite B
P.O. Box 3758
Springfield, Missouri 65808-3758

Attorney for Defendants

Attorney for Plaintiff